

LAW OFFICE OF KEVIN M. WELCH
Kevin M. Welch, (SBN 254565)
Kevin@kmwlawoffice.com
P.O. Box 494
Hermosa Beach, CA 90245
Tel.: (310) 929-0553
Fax: (310) 698-1626

**Attorney for the Plaintiff,
SKY BILLIARDS, INC.**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

**SKY BILLIARDS, INC., a
California corporation.**

Plaintiff,

v.

GIANTEX, a California entity of unknown status, **GOPLUS CORP.**, INC., a California Corporation, and **WEI WU**, an individual, and DOES 1 through 10, inclusive.

Defendants.

| Case No.:

COMPLAINT FOR DAMAGES FOR:

(1) INFRINGEMENT OF FEDERALLY REGISTERED TRADEMARK (15 U.S.C. §1114; Lanham Act 32);

(2) FEDERAL COUNTERFEITING (15 U.S.C. 1114(1)(a), 1116(d))

**(3) FEDERAL UNFAIR COMPETITION
(15 U.S.C. § 1125(a); Lanham Act
§43(a));**

(4) COMMON LAW TRADEMARK INFRINGEMENT;

(5) COMMON LAW UNFAIR COMPETITION; and

(7) CALIFORNIA UNFAIR COMPETITION (Cal. Bus. & Prof. Code §17200).

DEMAND FOR JURY TRIAL

1 Plaintiff, SKY BILLIARDS, INC. ("Sky") by and for its Complaint for
2 Damages, hereby alleges on personal knowledge as to its own actions, and upon
3 information and belief as to the actions of others, as follows:

4

5 INTRODUCTION

6 1. This is an action in law and equity for, *inter alia*, intentional
7 trademark infringement, counterfeiting, and unfair competition, knowingly
8 directed at Plaintiff Sky.

9 2. Plaintiff Sky is a California based company that is in the business of
10 importing a wide variety of goods into the United States and selling such goods
11 throughout the United States via Internet websites such as www.amazon.com
12 under its federally registered trademark BEST CHOICE PRODUCTS, United
13 States federal trademark registration no.: 4346291.

14 3. Each new product that Sky imports and wishes to sell on the Internet
15 website www.amazon.com must be registered and assigned a unique ASIN number
16 which stands for Amazon Standard Identification Number.

17 4. Each unique ASIN number identifies a specific product and that
18 product's source and/or affiliation; therefore, each product registered by Plaintiff
19 Sky is identified as being from and/or affiliated with Plaintiff Sky in the product
20 listing with the unambiguous designator "*By Best Choice Products*."

21 5. Plaintiff Sky takes great care in selecting and importing only goods
22 that meet Plaintiff Sky's high standards of craftsmanship and quality and Plaintiff
23 Sky invests time, money, and effort into its distribution infrastructure and customer
24 service such that consumers have grown to trust the trademark BEST CHOICE
25 PRODUCTS and associates the trademark with an efficient, satisfying, and a high
26 quality purchasing experience.

27 6. Plaintiff Sky believes that its investments of time, money, and effort
28 into its product selection, distribution infrastructure, and customer service has

1 caused its federally registered trademark, BEST CHOICE PRODUCTS, to amass
2 significant goodwill and that its investments have produced valuable returns in the
3 form of repeat business and word-of-mouth marketing via satisfied customers.

4 7. Recently, it has come to the attention of Plaintiff SKY that Defendants
5 GIANTEX , GOPLUS CORP., INC. (“GOPLUS”), and WEI WU (“MR. WU”)
6 (together “Defendants”) are intentionally and willfully attempting to profit from
7 Plaintiff Sky’s goodwill and reputation in bad faith by offering for sale and selling
8 counterfeit inferior quality products under Plaintiff Sky’s federally registered
9 trademark BEST CHOICE PRODUCTS through the website www.amazon.com
10 under the seller identity “GIANTEX.”

11 8. Defendant purposefully and knowingly misrepresents that its
12 products are provided by and/or affiliated with Plaintiff Sky and are defrauding
13 consumers who have come to expect the high quality goods and customer service
14 provided by Plaintiff Sky and are harming the goodwill associated with Plaintiff
15 Sky’s federally registered trademark, BEST CHOICE PRODUCTS, by falsely
16 associating their inferior quality goods and customer service with those of Plaintiff
17 Sky.

18 9. Defendants behavior is spurious in that they are passing off an inferior
19 quality product as a products associated with Plaintiff Sky with full knowledge that
20 doing so is unlawful and will harm Plaintiff SKY and destroy Plaintiff SKY’s
21 reputation for providing high quality products and customer service.

22 10. With full knowledge that Plaintiff Sky owns a federal registration for
23 the trademark BEST CHOICE PRODUCTS, Defendant has chosen to engage the
24 deceptive and unlawful practices of falsely stating that its inferior quality goods are
25 “By Best Choice Products.”

26 11. Each time Defendants intentionally use any one of Plaintiff Sky’s
27 ASIN numbers, Defendants are committing an unlawful act that is intentionally
28 and knowingly directed at the California based company, Plaintiff Sky.

1 12. Defendants' unlawful behavior is targeted, intentional, and directed at
2 Plaintiff Sky so that Defendants will either appear to be Plaintiff Sky or will appear
3 to be affiliated with Plaintiff Sky.

4 13. Defendants' intentional use of Plaintiff Sky's ASIN numbers is an
5 intentional effort to capitalize on Plaintiff Sky's reputation and Internet consumer
6 traffic and siphon sales away from Plaintiff Sky by creating a near identical
7 product listing with a lower price that would appear adjacent to Plaintiff Sky's
8 product listing each time it is displayed.

9 14. Defendant's unlawful behavior was and is knowingly directed at and
10 specifically designed to siphon business from and harm Plaintiff Sky.

11 15. Defendant's unlawful actions are performed with the full knowledge
12 that such behavior is unlawful and is harming Plaintiff Sky, in fact, each
13 counterfeit product listing posted by Defendant using Plaintiff Sky's ASIN
14 numbers display the misleading and infringing words "*By Best Choice Products*"
15 as a highlighted link that when selected leads directly to Plaintiff Sky's seller's
16 profile.

17 16. Plaintiff Sky is informed and believes, and based thereon alleges, that
18 Defendants' infringing activity is systematic and willful and/or done with reckless
19 disregard for Plaintiff Sky's intellectual property rights and asks that this Court
20 enjoin Defendants' unlawful activities and pay appropriate damages pursuant to
21 the above referenced federal and state statutes and common law.

THE PARTIES

24 17. SKY BILLIARDS, INC. is a corporation formed under the laws of the
25 state of California that maintains a principle place of business at 10955 Arrow
26 Route, Suite 103, Rancho Cucamonga, California 91730.

1 18. Upon information and belief, GIANTEX is a California entity of
2 unknown status that maintains a principle place of business at 8595 Milliken Ave,
3 Suite 101, Rancho Cucamonga, CA 91730.

4 19. Upon information and belief, GOPLUS CORP., INC. is a corporation
5 formed under the laws of the state of California that maintains a principle place of
6 business at 8595 Milliken Ave, Suite 101, Rancho Cucamonga, CA 91730.

7 20. Upon information and belief, WEI WU is a citizen of the state of
8 California and the owner of Defendant GIANTEX and GOPLUS CORP., INC. and
9 maintains an office at 8595 Milliken Ave, Suite 101, Rancho Cucamonga, CA
10 91730.

11 21. The true names, and identities or capacities, whether individual,
12 associate, corporate or otherwise of DOES 1 through 10, inclusive, are unknown to
13 Plaintiff Sky, who therefore sues said defendants by fictitious names. Plaintiff Sky
14 is informed and believes, and on such information and belief, alleges that each of
15 the Defendants sued herein as a DOE are legally responsible in some manner for
16 the events and happenings referred herein. When the true name, identity and
17 capacity of such fictitiously designated defendants are ascertained, Plaintiff Sky
18 will ask leave of the Court to amend this Complaint to insert said true names,
19 identities and capacities, together with proper charging allegations.

JURISDICTION AND VENUE

22 22. This is an action seeking permanent injunctive relief, monetary
23 remedies, other equitable remedies, and attorneys' fees based on several federal
24 causes of action including intentional trademark infringement, counterfeiting, and
25 the unfair competition. Defendant is knowingly directing its unlawful behavior at
26 Plaintiff Sky by unlawfully utilizing Plaintiff Sky's good reputation by utilizing its
27 federally registered trademark: BEST CHOICE PRODUCTS, reg. no.: 4346291 to
28 pass off inferior quality products. The harm from these unlawful acts is occurring

1 in the State of California, and more specifically in the Central District of
2 California.

3 23. This Court has subject matter jurisdiction over this lawsuit pursuant to
4 15 U.S.C. §§ 1121 and 1125(a) and 28 U.S.C. §§1331, 1338, and 1367, and
5 pursuant to the Court's pendent jurisdiction.

6 24. This Court has jurisdiction over Defendant GIANTEX because, *inter*
7 *alia*, Defendant GIANTEX maintains an office in the state of California and
8 conducts business in the state of California and the Central District of California.

9 25. This Court has jurisdiction over Defendant GOPLUS CORP., INC.
10 because, *inter alia*, Defendant GOPLUS CORP., INC. maintains an office in the
11 state of California and conducts business in the state of California and the Central
12 District of California.

13 26. This Court has jurisdiction over Defendant WEI WU because, *inter*
14 *alia*, Defendant WEI WU is a citizen of the states of California, maintains an office
15 in the state of California, and conducts business in the state of California and the
16 Central District of California.

17 27. This Court also has jurisdiction over Defendants because, *inter alia*,
18 Defendants have purposefully directed unlawful behavior at a California company,
19 Plaintiff Sky, with full knowledge that Plaintiff Sky was a California based
20 company and the harm would be suffered in the state of California.

21 28. Venue is proper in the Central District of California pursuant to 28
22 U.S.C. §§1391.

COUNT I
INFRINGEMENT OF FEDERALLY REGISTERED TRADEMARK
15 U.S.C. §1114 (LANHAM ACT §32)

29. Plaintiff Sky hereby incorporates by reference each and every
allegation contained in paragraphs 1 through 28 as though fully set forth herein,
and makes the following allegations on information and belief.

1 30. Plaintiff Sky is the owner of United States federal trademark
2 registration no.:4346291 for the mark BEST CHOICE PRODUCTS for: *Online*
3 *retail store services featuring a wide variety of consumer goods* in international
4 class 035.

5 31. Plaintiff Sky's U.S. federal trademark registration, no.: 4346291, is
6 valid, subsisting, and in full force and effect.

7 32. Defendants are actively selling a variety of goods on the Internet
8 including the website www.amazon.com using the seller identity "Giantex."

9 33. Defendant, through its Amazon seller identity "Giantex," purports to
10 sell a variety of goods that are provided by and/or affiliated with BEST CHOICE
11 PRODUCTS.

12 34. Exhibit A shows a screenshot from the website www.amazon.com
13 wherein the seller by the name of "Giantex" is offering to sell a "Drum Set 5 Pc
14 Complete Adult Set Cymbals Full Size Silver New Drum Set" provided "*by Best*
15 *Choice Products.*"

16 35. Defendants' conduct is likely to cause confusion, to cause mistake or
17 to deceive customers as to the origin, source, or sponsorship of Defendants' goods
18 and services, and is likely to create the false impression that Defendants' goods
19 and services are authorized, sponsored, endorsed, or licensed by, or affiliated with
20 Plaintiff Sky.

21 36. Defendants' conduct is willful, in bad faith, and with full knowledge
22 that Defendants have no right, license, or authority to use the trademark BEST
23 CHOICE PRODUCTS, or any other designation similar thereto.

24 37. Defendants' conduct is intended to reap the benefit of the goodwill
25 that Sky has amassed in the marks BEST CHOICE PRODUCTS, and constitutes
26 an infringement of Plaintiff Sky's federally registered trademarks in violation of
27 §32(1) of the Lanham Act, 15 U.S.C. §1114(1).

1 38. Because Defendants are using a trademark that is confusingly similar
2 to Plaintiff Sky's trademark, BEST CHOICE PRODUCTS, in connection with
3 U.S. commerce in an unauthorized manner, Defendants have caused and are
4 causing substantial irreparable harm to the goodwill associated with Plaintiff Sky's
5 federally registered mark and will continue to damage Plaintiff Sky, and to deceive
6 consumers unless enjoined by this Court.

7 39. Plaintiff Sky has no adequate remedy at law to address the continued
8 harm to its reputation and goodwill caused by Defendants' continued unauthorized
9 use in commerce of a trademark that is identical to, and therefore confusingly
10 similar to, Plaintiff Sky's trademark BEST CHOICE PRODUCTS.

COUNT II
FEDERAL COUNTERFEITING
15 U.S.C. 1114(1)(a), 1116(d)

14 40. Plaintiff Sky hereby incorporates by reference each and every
15 allegation contained in paragraphs 1 through 39 as though fully set forth herein,
16 and makes the following allegations on information and belief.

16
17 41. Plaintiff Sky is the owner of the federally registered trademark BEST
18 CHOICE PRODUCTS, reg. no.: 4346291.

19 42. Defendants have offered to sell goods and services on the Internet
20 under the identical trademark, BEST CHOICE PRODUCTS, without the
21 authorization or permission from Sky.

22 43. Defendants' use of the trademark, BEST CHOICE PRODUCTS, is a
23 spurious and intentional act to benefit from the goodwill, popularity, reputation,
24 and demand for goods associated with the trademark BEST CHOICE
25 PRODUCTS.

44. Defendants are currently, and have at all times relevant to this action,
26 been aware that the trademark BEST CHOICE PRODUCTS is owned by Plaintiff
27

1 Sky, and that Defendants do not have Plaintiff Sky's authorization or permission to
2 use Plaintiff Sky's trademark.

3 45. Plaintiff Sky has no adequate remedy at law to address the continued
4 harm to its reputation and goodwill caused by Defendants' continuous sale and
5 offer for sale of counterfeit goods.

COUNT III
FEDERAL UNFAIR COMPETITION
15 U.S.C. §1125(a) (LANHAM ACT §43(a))

9 46. Plaintiff Sky repeats and incorporates by reference the allegations
10 contained in paragraphs 1 through 45 as if fully set forth herein.

11 47. The conduct of Defendants is likely to cause confusion, to cause
12 mistake and/or to deceive consumers as to the origin, source, and/or sponsorship of
13 the services provided by Defendants, and is likely to create the false impression
14 that such services are authorized, sponsored, endorsed, licensed by, and/or
15 affiliated with Plaintiff Sky, the owner of the trademark BEST CHOICE
16 PRODUCTS and is generally unfair and deceptive.

17 48. The conduct of Defendants constitutes unfair competition, false
18 designation of origin, false advertising, false representation of fact, and false
19 description in violation of §42(a) of the Lanham Act, 15 U.S.C. §1125(a).

20 49. Because Defendants are using a mark that is confusingly similar to
21 the trademark BEST CHOICE PRODUCTS in connection with U.S. commerce in
22 an unauthorized manner, Defendants have caused and are causing substantial
23 irreparable harm to Plaintiff Sky and its federally registered trademark and will
24 continue to damage Plaintiff Sky, and to deceive consumers, unless enjoined by
5 this Court.

1 50. Plaintiff Sky has no adequate remedy at law to address the continued
2 harm to its reputation and goodwill caused by Defendants' continued use of a
3 trademark in commerce that is confusingly similar to Plaintiff Sky's trademark,
4 BEST CHOICE PRODUCTS.

COUNT IV
COMMON LAW TRADEMARK INFRINGEMENT

7 51. Plaintiff Sky repeats and incorporates by reference the allegations
8 contained in paragraphs 1 through 50 as if fully set forth herein.

9 52. Plaintiff Sky has used its trademark, BEST CHOICE PRODUCTS, to
10 sell goods on the Internet throughout the United States at least as early as March 8,
11 2006.

12 53. Plaintiff Sky's trademark, BEST CHOICE PRODUCTS, is inherently
13 distinctive; therefore, common law trademark rights vested with Plaintiff Sky as
14 soon as Plaintiff Sky began using the trademark in U.S. commerce.

15 54. With full knowledge of Plaintiff Sky's trademark, BEST CHOICE
16 PRODUCTS, Defendants subsequently began using an identical trademark in U.S.
17 commerce in conjunction with identical or substantially similar goods.

18 55. The conduct of Defendants is likely to cause confusion, to cause
19 mistake, and to deceive customers as to the origin, source, or sponsorship of
20 Defendants' goods and services, and is likely to create the false impression that
21 Defendants' goods and services are authorized, sponsored, endorsed, licensed by,
22 and/or affiliated with Plaintiff Sky.

23 56. Defendants had actual knowledge of Plaintiff Sky's exclusive rights in
24 its trademark BEST CHOICE PRODUCTS prior to using the identical mark in
25 U.S. commerce.

26 57. The conduct of Defendants is willful, in bad faith, and with full
27 knowledge that Defendants have no right, license or authority to use Plaintiff Sky's
28 trademark or any other designation similar thereto.

1 58. The conduct of Defendants is intended to reap the benefits of the
2 goodwill that Plaintiff Sky has created in its trademarks, and constitutes an
3 infringement of Plaintiff Sky's trademarks.

4 59. Because Defendants are using the trademark BEST CHOICE
5 PRODUCTS in connection with near identical goods sold on the Internet in an
6 unauthorized manner, Defendants have caused and are causing substantial
7 irreparable harm to the distinctiveness and goodwill associated with Plaintiff Sky's
8 common law trademarks and will continue to damage Plaintiff Sky, and to deceive
9 consumers, unless enjoined by this Court.

10 60. Plaintiff Sky has no adequate remedy at law to address the continued
11 harm to its reputation and goodwill caused by Defendants' continued use of the
12 trademark BEST CHOICE PRODUCTS, in U.S. commerce.

**COUNT V
COMMON LAW UNFAIR COMPETITION**

15 61. Plaintiff Sky repeats and incorporates by reference the allegations
16 contained in paragraphs 1 through 60 as if fully set forth herein.

17 62. The unlawful conduct of Defendants is likely to continue to cause
18 confusion, to cause mistake and deceive consumers as to the origin, source, or
19 sponsorship of goods provided by Defendants in connection with the trademark
20 **BEST CHOICE PRODUCTS**, and is likely to create the false impression that the
21 services provided by Defendants are sponsored by or affiliated with Plaintiff Sky.

22 63. The conduct of Defendants constitute unfair competition in violation
23 of the common law of California and other states.

24 64. The conduct of Defendants is willful, in bad faith, and with full
25 knowledge that Defendants have no right, license and/or authority to use the
26 trademark BEST CHOICE PRODUCTS, or any other designation confusingly
27 similar thereto.

1 65. Because Defendants are using the trademark BEST CHOICE
2 PRODUCTS in connection with the sale or offer for sale of identical goods,
3 Defendants have caused and are causing substantial irreparable harm to Plaintiff
4 Sky and will continue to damage Plaintiff Sky, and to deceive the consuming
5 public, unless restrained and permanently enjoined by this Court.

6 66. Plaintiff Sky has no adequate remedy at law to address the continued
7 harm to its reputation and goodwill caused by the Defendants' continued use of
8 unfair business practices.

COUNT VI
CALIFORNIA UNFAIR COMPETITION
Cal. Bus. & Prof. Code §17200

12 67. Plaintiff Sky repeats and incorporates by reference the allegations
13 contained in paragraphs 1 through 66 as if fully set forth herein.

14 68. The unlawful conduct of Defendants, as alleged above, also constitute
15 unfair, unlawful, and fraudulent business practices in violation of California
16 Business and Professions Code § 17200, et seq.

17 69. The wrongful acts of Defendants proximately caused, and will
18 continue to cause substantial injury to Plaintiff Sky including confusion of
19 potential customers, injury to reputation, and diminution of the value of Plaintiff
20 Sky's trademark BEST CHOICE PRODUCTS. These actions will cause imminent
21 irreparable harm and injury to Plaintiff Sky, the amount of which has not been
ascertained.

23 70. As a direct and proximate result of the wrongful acts of Defendants,
24 Plaintiff Sky has been damaged, and is entitled to injunctive relief and restitution
25 in an amount proven at trial. The acts of Defendants, described herein, irreparably
26 injure Plaintiff Sky's business, reputation and goodwill, and will continue to do so
unless restrained and permanently enjoined by this Court.

1 71. Plaintiff Sky has no adequate remedy at law to address the continued
2 harm to its reputation and goodwill caused by Defendants' continued use of a
3 trademark in commerce that is identical, and therefore confusingly similar to,
4 Plaintiff Sky's federally registered trademark BEST CHOICE PRODUCTS.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Sky respectfully requests the following relief;

8 A. A permanent injunction prohibiting Defendants, their
9 officers, directors, agents, principals, divisions, representatives, servants,
10 employees, associates, subsidiaries, affiliates, attorneys, successors and assigns,
11 and all persons acting by, through, under or in active concert or in participation
12 with or controlled, either directly or indirectly, by any of them, from using the
13 trademark **BEST CHOICE PRODUCTS**, or any confusingly similar variation
14 thereof, as, or as a component of, a trademark, trade name or otherwise, in
15 connection with the advertising, promoting, marketing, offering, selling similar
16 goods or services in the United States, and from otherwise infringing the U.S
17 federal trademark registration no: 4346291:

18 B. An accounting for all profits acquired by Defendants
19 through sales of goods or services in conjunction with the unlawful use of U.S.
20 federal trademark registration nos.: 4346291;

21 C. An award of \$250,000 for damage to the goodwill and reputation of
22 Plaintiff Sky's federally registered trademark BEST CHOICE PRODUCTS, reg.
23 no: 4346291;

24 D. An award of statutory damages in accordance with
25 15 U.S.C. § 1117(c)(2) of \$2,000,000 per counterfeit mark per type of product sold,
26 offered for sale, or distributed:

27 E. An award of treble damages or other enhanced monetary remedies
28 paid to Plaintiff Sky;

- 1 F. An award of attorneys' fees and cost paid to Plaintiff Sky; and
2 G. Any such further relief as the Court may deem just and appropriate.
3
4

5 **DEMAND FOR JURY TRIAL**

6 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, demand is
7 hereby made for trial by jury on all issues triable to a jury.
8
9

10 Dated this fifth day of April, 2015

11 By: _____

12 Kevin M. Welch, Esq. (SBN 254565)

13 LAW OFFICE OF KEVIN M. WELCH
14 P.O. Box 494
15 Hermosa Beach, CA 90245
16 Tel.: (310) 929-0553
17 Email:Kevin@kmwlawoffice.com
18 Attorney for Plaintiff,
19 Sky Billiards, Inc.